No. 189.

Brf. of Mitchell for Appellant.

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Filed April 9, 1902.

IN THE Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 189.

LEE LUNG, Appellant,

vs.

I. L. PATTERSON, Collector of Customs for the Port of Portland, Oregon.

Appeal from the District Court of the United States for the District of Oregon.

Brief and Argument on Behalf of Petitioner and Appellant.

CHARLES J. SCHNABEL and
JOHN H. MITCHELL,
Attorneys for Appellant.

McGILL & WALLACE, Law Printers, Washington, D. C.

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Brief and Argument on Behalf of Petitioner and Appellant.

Statement of the Case.

The facts of this case will be best fully presented to the court by setting out in *haec verbae* the Petition, the Return of the Respondent, the Collector of Customs at Portland, Oregon, the reply to the return, each of which follows here consecutively.

Copy of Petition for Writ of Habeas Corpus.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of Habeas Corpus as to LI TOM SHI and LI A TSOI, his wife and child.

To the Honorable, the District Court of the United States for the District of Oregon:

Your petitioner, Lee Lung, respectfully represents that he is a native born citizen of the Chinese Empire; that he now is and has been for more than twenty years last past a merchant, residing during all the said period of twenty years last past, except when absent on an occasional visit to China, during said time, in the city of Portland, State of Oregon, United States of America, carrying on and doing business therein as a merchant; that he is not and never has been a laborer; that as such merchant he belongs to the exempted classes of Chinese who, under the treaty between the United States of America and the Chinese Empire, and who, under the laws of the United States of America, are entitled to come into and reside and do business as merchants in the United States.

That about the month of October, 1898, your petitioner, Lee Lung, left the United States temporarily and went on a visit to Canton, China; that your petitioner returned to the United States on the ship *Monmouthshire*, arriving at the port of Portland, State of Oregon, United States of America, on the 3d day of April, 1900; that on your petitioner's return to the United States he was promptly permitted to land by Hon. I. L. Patterson,

Collector of Customs at the port of Portland, in the District of the Willamette, as a Chinese merchant; that his right to land as a Chinese merchant was duly recognized by said Collector of Customs.

Your petitioner further represents that he has a wife, whose name is Li Tom Shi, and that he has a daughter, now in the tenth year of her age, whose name is Li A Tsoi.

Your petitioner further represents that on his return to the United States from China on the ship *Monmouthshire*, as aforesaid, your petitioner brought with him from China on said vessel, his said wife, Li Tom Shi, and his said daughter, Li A Tsoi, both of whom came with your petitioner as his family in said ship *Monmouthshire*, arriving at the port of Portland, Oregon, in the United States of America, on the 3d day of April, 1900, as aforesaid.

Your petitioner further represents that said I. L. Patterson, Collector of Customs, aforesaid, at the port of Portland, Oregon, on the 7th day of April, 1900, and without having any power or jurisdiction whatever to make any examination, except as to the certificates hereinafter referred to, made a pretended and partial examination, but no such examination as the law contemplates should be made in such cases, of the right of said Li Tom Shi and Li A Tsoi, wife and daughter of your petitioner, as aforesaid, to enter into and remain in the United States, as the wife and daughter of your petitioner, and then and there, to wit, on April 7, 1900, made what purports to be, but what in fact is not a decision such as the law contemplates should be made in any Chinese case wherein such Collector has jurisdiction to inquire and decide. But your petitioner avers that said Collector of Customs I. L. Patterson, had, by reason of the existence and legal operation and effect of Article III of the treaty between the United States of America

and the Empire of China, ratifications of which were exchanged at Washington, December 7, 1894, no jurisdiction or power whatever to inquire into or decide on testimony *aliunde* the certificates issued by the government of the colony of Hong Kong, and vised by the consular representative of the United States at the colony of Hong Kong, China.

Your petitioner further represents that your petitioner and his family, the said Li Tom Shi and the said Li A Tsoi, his wife and daughter aforesaid, for about one year before leaving China for the United States as aforesaid, were all living in and residents of the city of Hong Kong, in the colony of Hong Kong, and before leaving said colony of Hong Kong for the purpose of coming to the United States as aforesaid, on said ship *Monmouthshire*, your petitioner's said wife and daughter applied to and obtained the permission of the government of the colony of Hong Kong, and was identified by the said government at Hong Kong as the wife and daughter of your petitioner, and as being each entitled to come to the United States and reside therein as the wife and daughter of your petitioner; and said Li Tom Shi and said Li A Tsoi were each then subjects of the Chinese Empire and residents of the colony of Hong Kong, and the said government of the colony of Hong Kong did then and there, to wit, on or about the 3d day of March, 1900, on evidence then submitted, determine and decide that said Li Tom Shi and said Li A Tsoi were the wife and daughter of your petitioner aforesaid, respectively, and as such were each entitled to enter and remain in the United States as the family and wife and daughter of your petitioner, and said government of the colony of Hong Kong did on said day, March 3, 1900, issue to each of said persons, namely, Li Tom Shi and Li A Tsoi, the wife and daughter of your petitioner aforesaid, a cer-

tificate, each of which certificates was in the English language, and each of which showed such permission to your petitioner's said wife and daughter to come to and reside within the United States, and each of such certificates contained the name of said wife and daughter aforesaid, respectively, in their own proper signatures, and each of which certificates stated the individual, family, and tribal name, also the age, height, and all physical peculiarities, occupation, and so forth, each of said certificates being in due legal form and in all respects in full compliance with Article III of the Treaty of 1894 hereinbefore referred to, and in all respects in full compliance with Section 6 of the Act of Congress of July 5, 1884, and acts supplemental to and amendatory thereof, although compliance with such acts of Congress your petitioner respectfully claims was not necessary, and that each of said certificates were duly vised by the Consular representative of the United States in said colony of Hong Kong, in all respects as provided by said treaty, and also in all respects as provided by said Section 6 of the Act of Congress of July 5, 1884, and laws supplemental and amendatory thereof, although compliance with the latter, your petitioner respectfully represents, was not necessary, in view of the provisions of the treaty aforesaid and of compliance therewith.

That said Li Tom Shi and said Li A Tsoi, wife and daughter aforesaid of your petitioner, are not either of them, nor were they either of them ever, at any time, laborers, but the family of and the wife and daughter, respectively, of your petitioner, a Chinese merchant.

And your petitioner further respectfully represents that on their arrival at the port of Portland, Oregon, as aforesaid, the said Li Tom Shi and the said Li A Tsoi, wife and daughter of your petitioner aforesaid, presented said certificates, respectively, to said I. L. Patter-

son, Collector of Customs aforesaid, and made claim that under and by virtue of such certificates they were entitled to enter and remain in the United States as the wife and daughter and family of your petitioner.

Your petitioner avers that in virtue of such certificates, respectively, the said Li Tom Shi and the said Li A Tsoi, wife and daughter aforesaid of your petitioner, were each entitled in virtue of said Article III of the treaty aforesaid to enter the United States and reside therein as the family of your petitioner.

Your petitioner further claims, that notwithstanding all these facts, such certificates were each ignored by said I. L. Patterson, Collector of Customs, and held for naught, the said Collector of Customs refusing to recognize or consider the same, and the said wife and daughter of your petitioner aforesaid were each wrongfully and unlawfully, and in violation of the rights of your petitioner's said wife and daughter aforesaid, under the provisions of the treaty hereinbefore cited, refused entry into the United States by said I. L. Patterson, Collector of Customs aforesaid.

Your petitioner further represents that immediately on the rendition of said alleged and pretended decision by the said Collector of Customs, each of said persons, the said wife and daughter of your petitioner aforesaid, took an appeal from said alleged and pretended decision of said Collector of Customs to the Secretary of the Treasury of the United States; and your petitioner avers that the Secretary of the Treasury has never yet either examined into said appeals nor made any decision therein one way or the other, nor has said appeals or either of them ever been considered, examined or decided, either by O. L. Spaulding, Assistant Secretary of the Treasury, or by any other person, except as hereinafter stated.

That on April 18, 1900, one W. S. Chance, then Chief of the Special Agents of the Treasury Department at Washington, D. C., pretended to examine said appeals, and rendered a pretended decision therein, which pretended decision purports to affirm the alleged decision of the Collector of Customs aforesaid refusing to allow said Li Tom Shi and said Li A Tsoi, wife and daughter of your petitioner, to enter the United States.

Your petitioner avers that it is claimed, as your petitioner is advised and believes, by the Collector of Customs aforesaid, that said alleged decision by said W. S. Chance, as hereinbefore stated, is the decision of O. L. Spaulding, Assistant Secretary of the Treasury. But your petitioner denies that said O. L. Spaulding, either as Assistant Secretary of the Treasury or otherwise, has ever made any examination of said appeals, or has ever made any decision therein one way or the other.

And your petitioner further avers that the said O. L. Spaulding, as Assistant Secretary of the Treasury, has no authority or jurisdiction whatever to examine into or decide said appeals or either of them, that said O. L. Spaulding, as Assistant Secretary of the Treasury, has never been legally or lawfully designated by the Secretary of the Treasury to examine into and decide such appeals, and your petitioner avers, furthermore, that the Secretary of the Treasury has no jurisdiction or power whatever to designate or authorize Assistant Secretary of the Treasury O. L. Spaulding, or any other Assistant Secretary of the Treasury, to examine into or decide said appeals.

And your petitioner further avers that the said I. L. Patterson, Collector of Customs aforesaid at the port of Portland, notwithstanding the invalidity of the said alleged decision by said W. S. Chance, and notwithstanding the further fact that said appeals have never

yet been examined or decided either by the Secretary of the Treasury, or any Assistant Secretary of the Treasury authorized to decide the same, recognizes said decision as binding on him, and as being an affirmance of his alleged decision refusing to allow said Li Tom Shi and said Li A Tsoi, the wife and daughter of your petitioner, to enter and reside in the United States, and the said I. L. Patterson, Collector of Customs aforesaid, now wrongfully detains and holds said Li Tom Shi and said Li A Tsoi, the wife and daughter of your petitioner aforesaid, in his custody, and now threatens to, and is about to place said Li Tom Shi and said Li A Tsoi, the wife and daughter of your petitioner aforesaid, on board the steamship *Braemer*, now in the port of Portland, Oregon, and about to depart for China, and threatens to, and intends to, and will, unless restrained by this Honorable Court, place said wife and daughter of your petitioner on board said steamship and will send them back to China.

That said I. L. Patterson, Collector of Customs aforesaid, claims to hold the said wife and daughter of your petitioner as aforesaid, under and by color of the authority of the United States, and your petitioner's said wife and daughter is retained in the custody of the said Collector of Customs aforesaid, and is about to be deported by him from this country back to China, in violation of the treaties now existing between the United States of America and the Chinese Empire, and in violation of the acts of Congress now in force.

Your petitioner therefore claims that said Li Tom Shi and said Li A. Tsoi, the said wife and daughter of your petitioner, are wrongfully and illegally imprisoned, detained, confined, and restrained of their liberty by said I. L. Patterson, at the city of Portland, county of Multnomah, State and District of Oregon, the only cause or

pretense for such wrongful and illegal imprisonment, restraint, and detention being the alleged decision of the Assistant Secretary of the Treasury as aforesaid.

Finally, your petitioner respectfully avers and claims that the said Li Tom Shi and the said Li A. Tsoi, wife and daughter of your petitioner aforesaid, are, by virtue of Article III of the existing treaty between the United States of America and the Chinese Empire, hereinbefore cited, and by virtue of their certificates produced by them respectively, to said Collector of Customs, as hereinbefore cited, entitled to enter and remain in the United States as the family and wife and daughter of your petitioner, a Chinese merchant. And your petitioner avers that their detention by the said I. L. Patterson, Collector of Customs aforesaid, is without jurisdiction and without due process of law, and in direct violation of their rights under the treaty hereinbefore cited and the Constitution and laws of the United States.

And your petitioner further avers that said I. L. Patterson, Collector of Customs aforesaid, was wholly without jurisdiction to take the testimony of witnesses, which he, the said Collector of Customs, did do, for the purpose of contradicting or controverting the facts stated in said certificates, respectively, as hereinbefore stated and referred to; and said I. L. Patterson, Collector of Customs aforesaid, was without jurisdiction or power to decide on the testimony of such witnesses as to the right of said Li Tom Shi and said Li A. Tsoi, wife and daughter aforesaid of your petitioner, to enter and remain in the United States.

Your petitioner therefore respectfully represents to the Court:

First. That Li Tom Shi and Li A Tsoi, the said wife and daughter of your petitioner, are entitled to enter and remain in the United States as the wife and daughter of

your petitioner, a Chinese merchant; that they and each of them fully complied with all the provisions and requirements of the existing treaty aforesaid and of the laws of the United States, to entitle them to come and remain in the United States.

Second. That said Collector of Customs, I. L. Patterson, had no jurisdiction whatever to make the examination and decision he claims to have made, and that no such examination or decision of the appeals in said cases as the law contemplates were ever made by the Secretary of the Treasury, or by any Assistant Secretary of the Treasury who had any jurisdiction or power to examine and decide such appeals.

Third. That the said wife and daughter of your petitioner are entitled to have their said appeals decided by the Secretary of the Treasury as the law provides, and until such appeals are so considered and decided, the said I. L. Patterson, as such Collector of Customs, has no jurisdiction, right or power whatever to deport the said wife and daughter of your petitioner, as he now threatens to do, and will do unless restrained by this Honorable Court; and should they be deported as the said Collector of Customs now threatens to do, and intends to do, on said steamship *Braemer*, they will be taken out of the jurisdiction of this Court and deprived of their constitutional and legal right to have their cases determined by the officials of this country as the law provides.

Wherefore, your petitioner prays that a writ of habeas corpus may issue in due form of law out of this Honorable Court, directed to the said I. L. Patterson, Collector of Customs aforesaid, commanding him to produce in this Court at such time and place as may be designated in such writ, the bodies of said Li Tom

Shi and Li A Tsoi, the wife and daughter of your petitioner aforesaid, for the purpose of such disposition as may be in accordance with the facts and the law of the case, and your petitioner will ever pray.

(Signed) LEE LUNG.

UNITED STATES OF AMERICA.

DISTRICT OF OREGON, } ss:
County of Multnomah, }

I, Lee Lung, being first duly sworn, say: That I am the petitioner in the above-entitled proceeding, and that the foregoing petition is true, as I verily believe.

LEE LUNG.

Subscribed and sworn to before me this 27th day of April, 1900.

[SEAL.[H. C. ROBERTSON,
Notary Public for Oregon.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of Habeas Corpus as to LI TOM SHI and LI A TSOI, his wife and child. } Return.

Return of Respondent to Writ of Habeas Corpus.

To the Honorable District Court of the United States, for the District of Oregon:

Now, at this time, comes I. L. Patterson, Collector of Customs for the District of the Willamette, and, in obedience to the order of your Honorable Court, now pro-

duces the bodies of Li Tom Shi and Li A Tsoi in Court, and answering the petition for a writ of habeas corpus filed herein—

Denies that Li Tom Shi is the wife of Lee Lung, and that Li A. Tsoi is the daughter of Lee Lung.

Admits that petitioner brought with him from China on the ship *Monmouthshire*, arriving in Portland upon he 3d day of April, 1900, the said Li Tom Shi and the said Li A Tsoi, representing them to be his wife and daughter, respectively.

Denies that your respondent, Collector of Customs, as aforesaid, upon the 7th day of April, 1900, or at any other time, without having power of examination, except as to certificates issued by the government of the colony of Hong Kong and vised by the consular representative of the United States at said colony, or that he made a pretended or partial examination, or did not make said examination, as the law contemplates should be made in such cases, of the right of said parties to enter into and remain in the United States as the wife and daughter of petitioner, or otherwise, or at all, or that on the said 7th day of April, 1900, or at any other time, made what purported to be, but in fact was not, a decision as to the admission of said parties.

Denies that respondent had no jurisdiction to decide on testimony *aliunde* the said certificates claimed to have been issued, as aforesaid.

Admits that said Li Tom Shi and the said Li A Tsoi were residents of the city of Hong Kong, in the colony of Hong Kong, and for the purpose of coming to the United States, applied to and obtained what purported to be a permission of the government of the colony of Hong Kong to come to the United States, but denies that said permission is regular in form, or that the said parties therein mentioned was identified as the wife and daughter of the said Lee Lung.

Denies that the said Li Tom Shi and Li A Tsoi, alleged wife and daughter of petitioner's, are not laborers; denies that they are the wife and daughter, respectively, of petitioner.

Admits that on the arrival of the said parties in the city of Portland they presented said alleged certificates to your respondent as Collector of Customs, and made claim that under and by virtue of said certificates they were entitled to enter and remain in the United States as the wife and daughter of Lee Lung; denies that by virtue of said certificates, or either of them, the said Li Tom Shi and Li A Tsoi, alleged wife and daughter of petitioner, were entitled in virtue of Article III of the treaty between the United States of America and the Empire of China, referred to in petition, to enter into the United States, or reside therein as the family of Lee Lung.

Denies that said certificates, or either of them, were ignored by respondent, but admits that they were held to be insufficient to permit the said parties to land within the United States, but denies that said alleged wife and daughter, or either of them, were wrongfully or unlawfully, or in violation of the rights of the said Lee Lung's alleged wife and daughter, under the provisions of the treaty referred to, refused entry into the United States by respondent, or were otherwise refused except as hereinafter stated.

Admits that the said Li Tom Shi and the said Li A. Tsoi, upon the rendition of the decision by your respondent denying them the right to land in the United States; that the said Li Tom Shi and the said Li A. Tsoi took an appeal from said decision to the Secretary of the Treasury of the United States, but denies that the said Secretary of the Treasury has never yet examined into said appeal or made any decision thereon, or that

said appeal has not been considered, examined or decided by either O. L. Spaulding, Assistant Secretary of the Treasury, or any other person in authority.

Denies that W. S. Chance, Chief of the Special Agents of the Treasury Department at Washington, pretended to examine said appeal or rendered a pretended or any decision therein, or any pretended decision which purported to affirm the alleged decision of the Collector of Customs, refusing to allow the said parties to enter the United States.

Denies that O. L. Spaulding, as Assistant Secretary of the Treasury, has no authority or jurisdiction to examine into or decide such appeals, or that the said O. L. Spaulding, as Assistant Secretary, of the Treasury, has never been legally or lawfully designated by the Secretary of the Treasury to examine into and decide such appeal; and denies that the Secretary of the Treasury has no jurisdiction or power whatever to designate or authorize the Assistant Secretary of the Treasury, O. L. Spaulding, or any other Assistant Secretary of the Treasury, to examine into or decide said appeals.

Admits that under a decision of the Secretary of the Treasury, affirming the decision of respondent refusing said parties to land within the United States, your respondent now obtains and holds the said Li Tom Shi and the said Li A. Tsoi in his custody for deportation to the country from whence they came, but denies that said detention is unlawful.

Denies that the said Li Tom Shi and the said Li A Tsoi, or either of them, are wrongfully or illegally imprisoned, detained, confined, or restrained of their liberty by your respondent at the city of Portland, county of Multnomah, State of Oregon, or elsewhere or at all.

Denies that the said Li Tom Shi or the said Li A Tsoi, or either of them, are by virtue of Article III, or

any other portion of the existing treaty between the United States of America and the Chinese Empire, or by virtue of their alleged certificates produced by them to your respondent, entitled to enter in or remain in the United States as a family, or wife, or daughter of said Lee Lung, or otherwise, or at all.

Denies that your respondent, Collector of Customs as aforesaid, was wholly or at all without jurisdiction to take testimony of witnesses, which he did do for the purpose of contradicting and controverting the facts pretended to be stated in said pretended certificates, was without jurisdiction or power to decide the testimony of said witnesses as to the right of the said Li Tom Shi and the said Li A Tsoi, alleged wife and daughter of the said Lee Lung, to enter or remain in the United States.

Denies that Li Tom Shi and Li A Tsoi, or either of them, are entitled to enter or remain in the United States as the wife or daughter of the said Lee Lung, or otherwise, or at all, or that they, or either of them, have fully or at all complied with all or any of the provisions or regulations of the existing treaty and laws of the United States to entitle them to come or remain within the United States, and denies that your respondent had no jurisdiction to make or examine a decision, or that no examination or decision of the appeals in said cases, as the law contemplates, were made by the Secretary of the Treasury or any Assistant there of who had jurisdiction or power to examine or decide such appeals.

Your respondent, for a further and separate return and reasons why he detained the said Li Tom Shi and Li A Tsoi in his custody, alleges:

That on the 7th day of April, 1900, at the port of Portland, in the State and District of Oregon, the said

Li Tom Shi and Li A Tsoi made application to land in the United States, at said port of Portland, from the ship *Monmouthshire*, as of the excepted class of Chinese persons.

That the said Li Tom Shi and the said Li A Tsoi, each presented what they claimed to be a certificate issued by the government of the Province of Hong Kong and vised by the United States Consul General at Hong Kong, the originals of which are hereunto attached and made a part of this return; that the said certificates were not in conformity with the laws of the United States, not being signed by the Registrar General of Hong Kong, person in authority there, and who is required to sign such certificates, but was signed by one F. A. May, whom your respondent is informed, and therefore alleges, was the then Captain General of Police of Hong Kong, and that a Mr. Lockhart is the Registrar General at Hong Kong; that Mr. Lockhart's name does not appear upon said alleged certificates; that said certificates were duly considered by your respondent, and your respondent took other testimony to determine whether or not the said Li Tom Shi and Li A Tsoi were of the excepted class of Chinese persons entitled to land as such under the laws and treaties of the United States; that after considering all of the testimony, together with said certificates, your respondent, as Collector of Customs, rendered his decision in the case of Mrs. Li Tom Shi, and in substance as follows, to wit:

"No. 1. Office of the Collector of Customs, District of Willamette, Portland, Oregon, April 7, 1900.

Now, at this time, comes on for hearing the application of Mrs. Li Tom Shi, a subject of the Emperor of China, for admission to the United States as a wife of Lee Lung, and after hearing the evidence of applicant, and witnesses on behalf of the applicant, and the evidence of Lee Lung and Miss Li A Tsoi and irregularity of

consular certificate, and no evidence of marriage, and being at this time fully advised in the premises, it is ordered that the said Mrs. Li Tom Shi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove his right to land.

I. L. PATTERSON, [SEAL.]
Collector of Customs."

Did, upon same date, render a like decision, with the exception of there being no reference to marriage, in the case of Li A Tsoi; that thereafter, upon the 10th day of April, 1900, said Li Tom Shi and the said Li A Tsoi duly perfected an appeal from the said decision of the Collector of Customs, denying them the right to land in the United States, to the Secretary of the Treasury of the United States, the said Secretary of the Treasury, by O. L. Spaulding, Assistant Secretary of the Treasury, on the 18th day of April, 1900, rendered an opinion duly affirming said decision of your respondent, refusing said parties to land within the United States, the original of which is hereunto appended, and made a part of this return; that respondent does not detain or hold either the said Li Tom Shi or Li A Tsoi for any other reason or cause save and except as herein set forth.

Wherefore, respondent prays your Honorable Court for an order remanding the said Li Tom Shi and the said Li A Tsoi to his custody for deportation from the United States to the country from whence they came.

I. L. PATTERSON.

DISTRICT OF OREGON } *ss:*

I, I. L. Patterson, being first duly sworn, depose and say, that I am the Collector of Customs for the District of the Willamette; that I have read the foregoing return, and know the contents thereof, and that the same is true, as I verily believe; so help me God.

I. L. PATTERSON.

Subscribed and sworn to before me this 7th day of May, 1900.

E. D. McKEE,
Clerk United States District Court,
District of Oregon.
By G. H. MARSH,
Deputy.

The exhibits attached to the foregoing return will be found copied at pages 24 to 31, inclusive, of the Transcript on Appeal.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of Habeas Corpus as to LI TOM SHI and LI A TSOI, his wife and child. } Reply to Return.

Reply to Return of Respondent.

To the Honorable, the District Court of the United States for the District of Oregon:

Now, at this time, comes Lee Lung, the petitioner in the above entitled proceeding, and makes reply and traverse to the return of I. L. Patterson, Collector of Customs, filed herein, as follows:

Your petitioner denies that the certificates produced by said Li Tom Shi and Li A Tsoi to the Collector of Customs were not in conformity with the law of the United States.

Your petitioner denies that under the law of the United States it was necessary that such certificates should be signed by the Registrar General of Hong Kong, or

that he is required to sign such certificates; although your petitioner avers that said certificates and each of them were signed by one F. A. May at the instance and under the direction of the Registrar General of Hong Kong, and as and for him.

And your petitioner avers that F. A. May, whose signature is attached to each of said certificates, and placed there, together with the official seal of the Registrar General, with the consent and at the instance and under the directions of the Registrar General of Hong Kong, is an official himself, high in authority in the British colony of Hong Kong, and with full jurisdiction and power to represent the government of the British colony of Hong Kong, and also the Registrar General in the matter of the execution of such certificates, and each of said certificates contains the official seal of the Registrar General of the British colony of Hong Kong, by authority of such government; and the said certificates, your petitioner avers, are each of them the certificates of the government of the British colony of Hong Kong, and are in all respects all that is required by the law of the United States and the treaties of the United States now existing between the United States Government and the Imperial Government of China.

Your petitioner, further replying, as in his petition, avers that said I. L. Patterson, Collector of Customs, erred in holding said certificates and each of them irregular, and in admitting testimony to contradict such certificates, and in all this the Collector of Customs exceeded his jurisdiction, erred in law, and his decision is therefore reviewable in this Court.

Your petitioner denies that the Secretary of the Treasury, by O. L. Spaulding, Assistant Secretary of the Treasury, did on the 18th day of April, 1900, or at any other

time, render an opinion duly affirming said alleged decision of the Collector of Customs.

Your petitioner avers that what is averred to be the original of such opinion and decision attached to the return herein, shows upon its face that it is not the decision of the Secretary of the Treasury, or of the Assistant Secretary of the Treasury, O. L. Spaulding, but that the same is the decision of W. S. Chance, Chief of the Special Agents of the Treasury Department.

Your petitioner further avers that the pretended hearing before the Collector of Customs on the 7th day of April, 1900, as aforesaid, was had before your petitioner had secured any counsel, and he had no counsel present to advise him as to his rights before the Collector of Customs, and that such examination was without jurisdiction, perfunctory, and was not a thorough examination of the case.

Wherefore, your petitioner prays as in his original petition.

LEE LUNG,
Petitioner.

UNITED STATES OF AMERICA,
District of Oregon, } ss:

I, Lee Lung, being first duly sworn, say that I am the petitioner named in the foregoing reply, and that said reply is true, as I verily believe.

LEE LUNG.

Subscribed and sworn to before me this 7th day of May, 1900.

H. C. ROBERTSON,
[SEAL.] *Notary Public for Oregon.*

Testimony in the Case.

(The attention of the Court is attracted to all the testimony in the case. See pages 53 to 76, inclusive, of Transcript on Appeal.)

It will be seen from what precedes, that Lee Lung, the petitioner, is a Chinese merchant, doing business in connection with several large firms in the United States, the principal house being at Portland, Oregon. That in October, 1898, he returned to China; that on the 3d day of April, 1900, he returned to this country in the steamship *Monmouthshire*, bringing with him Li Tom Shi, whom he claimed to be his wife, and Li A Tsoi, whom he claims is his daughter, the latter being only ten years of age. Lee Lung was, without hesitation, permitted to land as a Chinese merchant; the right to land, however, upon the part of the alleged wife and daughter was denied, and on appeal to the Secretary of the Treasury, this decision, if ever passed upon at all, which we deny, was affirmed. Subsequently, this petition for writ of habeas corpus was filed in the District Court of the United States for the District of Oregon. The writ was ordered to be issued, and, on final hearing, was discharged by the Court, the Court rendering the following opinion:

IN THE DISTRICT COURT OF THE UNITED STATES,

For the District of Oregon.

In the matter of the Application of LEE LUNG for Writ of Habeas Corpus for LI TOM SHI and LI A TSOI, his wife and child.

Opinion of the Court.

John H. Hall for the Government.

John H. Mitchell and Charles J. Schnabel for the petitioner.

BELLINGER, J.—This is a proceeding on a writ of habeas corpus, issued upon the petition of Lee Lung in behalf of Li Tom Shi and Li A Tsoi, his wife and child, who recently arrived at this port on the steamer *Monmouthshire*, and were refused landing by the Collector of Customs. Lee Lung is a merchant doing business in this city and having business connections with various Chinese mercantile establishments throughout the country. He is the agent of the North Pacific Steamship Company in soliciting Chinese passengers to and from China by that line. He was a passenger by the same steamship upon which his wife and daughter arrived. Before going to China he consulted with an attorney in this city, and also saw the Collector of Customs at this port, with reference to the evidence necessary to secure the landing of his wife and child, and was informed that a certificate issued out of the Registrar General's office at the port of Hong Kong, that being the port of his intended departure, vised by the American Consul, would accomplish such object. In accordance with this advice Lee Lung procured certificates issued out of the office of the Registrar General at Hong Kong, and under the seal of that office, vised by the American Consul-General at that port, as required by law, which certificates, in all respects, conform to the requirements of the Act of Congress, and which are made by such act *prima facie* evidence of the right of the persons named therein to land in the United States.

It is alleged in the petition for the writ that the Collector of Customs at this port disregarded the evidence thus provided, and, without authority of law, refused to

permit Li Tom Shi and Li A Tsoi to land; that he made no decision such as the law contemplates shall be made, and that his acts as aforesaid, in ignoring the certificates issued out of the Registrar's office at the port of Hong Kong, were wrongful and unlawful, and in violation of the rights of the petitioner's wife and daughter aforesaid, under the provisions of the treaty of the United States with the Chinese government, and that the appeal taken by the petitioner to the Secretary of the Treasury was not heard or passed upon by that officer, but that there was a pretended decision in respect thereto by one W. S. Chance, a special agent of the Treasury Department.

The Collector of Customs in his return to the writ alleges that the certificates in question were not in conformity with the laws of the United States, by reason of the fact that they were not signed by the Registrar General at Hong Kong, the person in authority there, but were signed by one F. A. May, who is alleged to be the Captain General of Police at that port. He further alleges that said certificates were duly considered by him, and that he took other testimony as to the right of the persons named in the petition to land, and decided adversely thereto, and that petitioner's appeal from said decision was heard and adversely decided by O. L. Spaulding, Assistant Secretary of the Treasury.

In the case of Way Tai (96 Federal, 484), it was held in this Court, by Judge Gilbert, on the authority of decisions by the Supreme Court of the United States, that the Collector is not required to conform his proceedings to what is known as due process of law; that the Collector of Customs is not required to take any testimony at all, but to decide as to the right to land upon his own inspection and examination, and that his decision in respect thereto is final; and such is the effect of the decisions of the Supreme Court cited in that case. By

these decisions it is held that "the statute does not require Inspectors to take any testimony at all, and allows them to decide on their own inspection and examination the question of the right of any alien immigrant to land." (Nishimura Ekiu's Case, 142 U. S., 651.)

In the earlier case of Gin Fung, decided by the same judge (89 Federal, 153), the petitioner was discharged upon writ of habeas corpus, where it appeared that the Collector of Customs only heard part of the testimony of one witness, and then left the room, delegating further examination of the witness to one B. F. Jossey, Chinese Inspector; that the petitioner presented another witness on the following day, at the office of the Collector, where he was met by said Inspector, who offered to hear the testimony of the witness presently, but intimated to such witness that he might be arrested for false swearing, if he testified as a witness in the proceeding, with the result that the witness was intimidated thereby, and refused to testify; that, as a matter of fact, the steamer had cleared from the port of Portland on the previous evening, on her way to China, taking the petitioner with her. Upon appeal to the Circuit Court of Appeals, this case was reversed, and it is held, in effect, that the Court is without jurisdiction to discharge, upon writ of habeas corpus, where the Collector undertakes to deport a petitioner without a hearing, or pending a hearing; that the power of the Court might be properly exerted in such case to arrest the consequences of the Collector's illegal act, but that it could go no further. (100 Fed., 389.)

It is not clear as to what is meant by jurisdiction in the courts to "arrest the consequences of the Collector's illegal act." If the Court is without jurisdiction to inquire, upon writ of habeas corpus, as to the legality of the petitioner's detention under such circumstances, it is without any jurisdiction whatever in the premises. So

far as I am advised there is no power in the courts to control the action of the Collector of Customs as suggested. These cases establish the doctrine that the Collector of Customs, in determining the right of Chinese persons to land, may act upon his own information and discretion, and that such action, however taken, is conclusive of the matter, subject to the right of appeal to the Secretary of the Treasury; that his decision, if he decides not to hear testimony, or not to give effect to evidence which the laws of Congress have provided shall be sufficient to establish the right to land in the first instance, or decides not to decide, is conclusive. Under the doctrine of these cases, it is immaterial, so far as the jurisdiction of this Court is concerned, whether the petitioner's appeal to the Secretary of the Treasury is heard by the Secretary in person, or by a subordinate official in his Department, or is heard at all.

The petition for the writ is dismissed.

C. B. BELLINGER,
Judge.

The facts of the case are truly stated in this opinion of the Court.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the District of Oregon.

In the Matter of the Application of Lee Lung for Writ of Habeas Corpus as to Li Tom Shi and Li A Tsoi, his wife and child. } Assignment of Errors.

Assignment of Errors.

Lee Lung, in the above entitled cause, in connection with his petition for an appeal, makes and assigns the

following errors, which he avers occurred upon the hearing and determination of this cause and his application for a writ of habeas corpus herein, for and in behalf and for the bodies of Li Tom Shi and Li A Tsoi, his wife and daughter, respectively, and upon which he will rely upon appeal to the Supreme Court of the United States.

I.

Error of the Court in holding that, upon the facts set forth in the petition herein, that the act of Congress approved August 18, 1894, has withdrawn from the jurisdiction of the Court authority to act in the premises or to issue the writ.

2.

Error of the Court in dismissing petitioner's application herein.

CHAS. J. SCHNABEL and
JOHN H. MITCHELL,
Attorneys for Lee Lung and Petitioners.

ARGUMENT.

We concede the general rule, well established by repeated decisions of this and other courts, that under the existing law the decision of the Collector of Customs refusing to land an alien is not reviewable by the courts on writs of habeas corpus or otherwise. This, we say, we concede to be the *general* and well-established rule, but this rule, like almost every other rule, has its exceptions, or rather its limitations and qualifications.

For instance, if for any reason the Collector in his decision exceeds his jurisdiction, or exercises a jurisdiction not vested in him by the treaty or law, then, it is submitted,

his decision would be reviewable in the courts on habeas corpus. To make plain the proposition we wish to present, we submit if a treaty or a law of Congress declares that a certain paper, executed in a certain way, by a certain official, *shall be evidence*, and the *only* evidence which an alien is permitted to present of his right to land and remain in this country, and that such paper shall make a *prima facie* case of his right to land, then, we submit, if the Collector rejects such a paper, and refuses to consider it, that he exceeds his jurisdiction, and his decision in such a case is *void*, and is reviewable by the judiciary.

Assuming for the present that the sixth section of the Act of 1884 is still in force and applicable to the case at bar, we will inquire as to its scope and effect. That section provides as follows:

"* * * Such certificate, vised as aforesaid, *shall be prima facie evidence of the facts set forth therein*, and shall be produced to the Collector of Customs of the port in the district of the United States at which the person named therein shall arrive, and afterwards produced to the proper authorities of the United States whenever lawfully demanded, *and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States*, but such certificate may be controverted and the facts therein stated disproved by the United States authorities."

This provision, the Court will observe, provides not only that such certificate "*shall be prima facie evidence of the facts set forth therein*," but also that it shall be "*the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States.*"

It is respectfully submitted, therefore, that if the Collector rejects a certificate that is in all respects such a certificate as the law prescribes, that in doing so he ex-

ceeds his jurisdiction. The Collector has no right, no power, no jurisdiction to decide that a certain paper which the Congress has said *shall be evidence*, and *prima facie* evidence of a certain right is *not* evidence. The question presented is quite different from the one wherein the Collector passes upon certain evidence, either rejecting or admitting it, when there is no law on the subject to the effect that the evidence thus rejected or admitted *shall be evidence of a certain fact.* Congress has seen proper to define in this section the kind and character of a *certain paper;* which *shall be evidence*, and which shall make a *prima facie* case of the right of the alien to land.

The rejection of these certificates by the Collector was not merely an error in law, it was more than this. By rejecting them he *exceeded his jurisdiction.* If in fact the certificates were such as the law contemplates, and the Collector held that they were not, then, it is submitted, he exceeded his jurisdiction, from the fact that the statute itself declares such certificates to be *prima facie* evidence of the parties' right to land, and shall be the *only* evidence which such person can produce. It is respectfully insisted, therefore, that there was no such hearing or decision by the Collector of Customs as the law contemplates shall be final. There has not been mere error of law upon his part, but a plain *excess of jurisdiction*, and therefore his decision is reviewable by the Court.

It is, we respectfully submit, an open question in this case as to whether the Collector considered these certificates and passed upon their validity and rejected them as insufficient, or whether he did not consider them at all and did not pass upon their validity or invalidity, as in either view of the case, we respectfully submit, the Collector is not chargeable merely with error, in which

event his decision is not reviewable by the Court, but with the more serious charge of having *exceeded his jurisdiction*, in which case, we submit, his decision is reviewable.

The Collector's decision in the case of the alleged wife is as follows:

"Refused. No. 1.

Office of the Collector of Customs,
District of Willamette,
Portland, Oregon, April 7, 1900.

"Now, at this time, comes on for hearing the application of Mrs. Li Tom Shi, a subject of the Emperor of China, for admission to the United States as a wife of Lee Lung, and after hearing the evidence of applicant and , witnesses on behalf of the applicant, and the evidence of Lee Lung and Miss Li A Tsoi *and irregularity of consular certificates*, and no evidence of marriage, and being at this time fully advised in the premises, it is ordered that the said Mrs. Li Tom Shi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove his right to land.

[SEAL.] I. L. PATTERSON,
(Record, p. 14.) *Collector of Customs.*"

While in the case of the daughter the decision of the Collector is as follows:

"Refused. No. 2.

Office of the Collector of Customs,
District of Willamette,
Portland, Oregon, April 7, 1900.

"Now, at this time, comes on for hearing the application of Miss Li A Tsoi, a subject of the Emperor of China, for admission to the United States as a daughter of Lee Lung, and after hearing the evidence of applicant and , witnesses on behalf of the applicant, and the evidence of Mrs. Li Tom Shi and Lee Lung *and irregularity of papers*, and being fully advised in the premises,

it is ordered that the said Miss Li A Tsoi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove his right to land.

[SEAL.] I. L. PATTERSON,
(Record, p. 13.) *Collector of Customs.*"

This is one view of the case, and proceeds upon the assumption that the Collector decided that the certificates were *not* such certificates as the treaty and the law required, and therefore his decision was in excess of his jurisdiction.

But there is another view of the case, based upon the assumption that it appears from the record that the decision of the Collector was not such a one as the law contemplates, and therefore is not final or binding upon the courts, and that is this: While it appears from what purports to be the decision of the Collector attached to his return, that Mrs. Li Tom Shi and Li A Tsoi presented certificates, it also appears from such decision that the Collector did not pass upon the validity of the certificates one way or the other. It does not appear from his decision what effect, if any, one way or the other, was given to the certificates by the Collector; the decision simply says: "*Irregularity of the consular certificates.*" This is no decision at all, one way or the other; it does not appear from this whether the Collector held the certificates to be valid or invalid; whether they complied with the law fully, according to the letter, or whether they did not; whether they were a substantial compliance with the law or otherwise.

If the Collector claim, as it seems he did, that there was *some* irregularity about the certificates, then it was his duty to decide whether such irregularity did or did not affect the validity of the certificates, and in failing to do this, and leaving the question wholly in

the dark by his decision as to whether the certificates were valid or invalid—the provisions of the law and treaty being considered—he acted without jurisdiction and has not made *such a decision* as should be final or conclusive on this Court or any other.

The Collector, it will be observed, after reciting that there is "*irregularity of consular certificates*," says "*and no evidence of marriage.*" The *law*, however, declares that the certificate presented by Li Tom Shi "shall be *prima facie* evidence of the *facts* set forth therein." And one of the facts set forth in said certificate is that Li Tom Shi is the "wife of Lee Lung, merchant of Portland, Oregon, U. S. A." We have, then, this state of facts presented: The statute of the United States declaring that a certain paper, executed in a certain way, shall be evidence of a certain fact therein recited, while the Collector of Customs declares that there is no evidence whatever before him to the effect that the claimant Li Tom Shi is the wife of Lee Lung. This, we submit, is an excess of jurisdiction upon the part of the Collector. It is a decision he has no right to make, and, therefore, it is a decision which is *void*. It is true the Collector could hear other evidence for the purpose of *assailing* the fact recited in the certificate, but he must, in the *first instance*, it is submitted, give the claimant the benefit of the *prima facie* case made by the certificate, because such is the mandate of the law.

The Certificates are in all Respects Legal.

It is respectfully submitted the certificates presented by Li Tom Shi the wife, and Li A. Tsoi the child, were in all respects legal, and should have been so recognized by the Collector. (See Exhibit "A," Record, 13, and Exhibit "B," Record, 15.)

These certificates, respectively, were issued in pursuance of the terms of the treaty; they comply in all respects in the recitals, not only with the requirements of the treaty, but with the Act of Congress, were signed by F. H. May, by Registrar General, Hong Kong, and these properly vised by R. Wildman, United States Consul General, who certifies that the seal and signature to the certificates are the genuine seal and signature of F. H. May. (Record, 14, 15, 16.)

These certificates bearing the seal of the British government at Hong Kong, should have been received as authentic by the Collector, and should have been regarded as presenting a *prima facie* case of *all the facts recited therein.* Among these it is recited that Li Tom Shi is the wife of Li Lung, merchant of Portland, Oregon, U. S. A., and that Li A. Tsoi is the daughter of Li Lung, merchant of Portland, Oregon, U. S. A. (Record, 13–15.)

The statute does not say one word about the Registrar General. The Attorney General in an opinion says that a certificate of the Registrar General will be accepted. Our contention is in this case, as the certificates have the seal of office attached, the presumption follows that they were executed by the authority of the Government.

The sixth section of the Act of May 6, 1882, as amended by section 6 of the Act of July 5, 1884, and the second article of the treaty of 1880, were abrogated and repealed by the third article of the treaty between the United States and the Imperial Government of China of March 17, 1894.

The question has never yet been decided by the Supreme Court of the United States, or any of the Federal courts, so far as we have been able to examine, as to

the precise effect of the third article of the treaty between the United States and the Empire of China of March 17, 1894, ratified December 7, 1894, in so far as the question is concerned as to what any one of the exempted classes must do to entitle him to come here and remain in the United States.

Various questions have arisen and been decided by the Supreme Court of the United States as to the rights of the exempted classes under the second article of the treaty of 1880, construed in connection with the sixth section of the Chinese Exclusion Act of 1882 as amended by the Chinese Exclusion Act of 1884.

Prior to February 26, 1900, the Federal District and Circuit Courts, as well as the Court of Appeals, had divided in their opinions and decisions as to the effect of this provision of the treaty of 1880, construed in connection with the sixth section of the Act of 1882, as amended by the sixth section of the Act of 1884 as applicable to the exempted classes. Some of these courts holding, as will be shown specifically hereinafter, that the wife and child of a Chinese merchant in order to be admitted must obtain and produce the certificate as provided by the sixth section of the Act of 1884; while others of these Federal courts were equally positive in their declarations and decisions to the effect that a wife or child of a Chinese merchant was not obliged to produce such certificate, but could be admitted on simple proof, satisfactory to the Collector of Customs, that such person was the wife or child of a Chinese merchant.

This Court, however, on February 26, 1900, in the case of Mrs. Gue Lim, Ah Tong, Yee Yuen, and Ah Quong, on appeal from the District Court of the United States for the District of Washington, held that under the treaty of 1880, and the sixth section of the Act of 1882, as amended by the sixth section of the Act of 1884, the

wife and child of a person admitted to be a Chinese merchant, and entitled to enter and live within the United States, was not obliged to obtain or produce the certificates specified in section 6 of the Act of 1882, as amended by the Act of 1884.

Gue Lin, Ah Tong, Ye Yuen, and Ah Quong. 176 U. S. 459.

But this Court in that case did not consider or pass upon the question as to the precise effect, meaning, and scope in its application to the exempted classes of the third article of the treaty of December, 1894, and we now in this case call upon this Court to pass upon that question.

Our contention is, therefore, that the *third* article of the treaty of 1894 is wholly and entirely different in its scope, meaning, and effect from the *second* article of the treaty of 1880, and also of the sixth section of the Act of 1882, as amended by the sixth section of the Act of 1884, and that it is in effect *a repeal of both of those provisions*. For the convenience of the Court we now cite these two articles in the respective treaties of 1880 and 1894.

Treaty of 1880, Article II.

"Chinese subjects whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now within the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to citizens and subjects of the most favored nations."

Treaty of 1894, Article III.

The provisions of this convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travelers for curi-

osity or pleasure, but not laborers, of coming to the United States and residing therein. *To entitle such Chinese subjects as are above described to admission into the United States they may produce a certificate from their government, or the government where they last resided, vised by the diplomatic or consular representative of the United States in the country or port whence they depart.*"

The Court will perceive the difference in these two articles. In the former, that is the treaty of 1880, there is no provision whatever as to the *evidence* which the exempted party must produce in order to entitle him to enter the United States, but under that treaty this question as to what the exempted party must do, what evidence he must produce, and the effect of such evidence, was left entirely to the Congress of the United States; hence, the passage by Congress, first, of the sixth section of the Exclusion Act of 1882; and, second, its subsequent amendment in the Exclusion Act of 1884.

In the other case, that of the third article of the treaty of 1894, the two governments, acting together, provided, *in terms*, in this third article of the treaty of 1894, as to the steps to be taken, and *the evidence* to be produced by any member of the exempted classes, in order to admit such person to the United States, thus taking this question out of the hands of Congress entirely—unless, indeed, Congress might, by an act passed subsequent to the date of the treaty, if it saw proper, which it is conceded Congress might do or might have done—which would have operated as a repeal of the provisions of the treaty itself.

Now, mark the difference, moreover, between what is required of the exempted party under the *third* article of the treaty of 1894, in order to entitle such party to admission, and that required under the *second* article of the treaty of 1880, construed in connection with the amendment of section 6 of the Act of 1884.

In the treaty of 1880, and the Act of 1884, it was required that the certificate should state a great number of things; the sixth section of the Act of 1884, after providing that anyone entitled under the treaty of 1880 to come within the United States, should obtain the permission of, and be identified as so entitled by the Chinese government, or of such other government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such government, then provides as follows:

"Which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his own proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any; the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States. If the person so applying for a certificate shall be a merchant, such certificate shall in addition to the above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid."

All these things were required by the treaty of 1880, construed in connection with the sixth section of the Act of 1884. But mark the difference in the third article of the treaty of 1894. All that is necessary to entitle a member of the exempted class to come in under that article of that treaty is that he or she shall produce—

"a certificate from their government, or the government where they last resided, vised by the diplomatic or consular representative of the United States in the country or port whence they depart."

So it will be perceived by the Court that not only the

right of certain exempted classes to come to this country, but also the *evidence* which such exempted classes shall produce is provided for in the treaty itself.

It must be borne in mind that since the treaty of 1894 went into effect, Congress has passed no act whatever upon the subject of Chinese exclusion that in any manner conflicts with the third article of the treaty of 1894.

Furthermore, when the third article of the treaty of 1894 protects the rights of "Chinese subjects being officials, teachers, students, merchants, or travelers for curiosity, or pleasure, but not laborers," in coming to the United States and residing therein, such provision, under the law and adjudications of this Court, that a merchant's wife and child occupy the same status as a merchant, and therefore such wife and child, under the third article of the treaty of 1894, is just as much entitled to a certificate and to admission under such certificate as though the words "merchant's wife and children had been inserted *eo nomine* in the treaty itself.

As a further and, what seems to us, a conclusive argument in favor of our contention that the treaty of December, 1894, was intended by all parties to the same to repeal and set aside section 6 of the Act of 1882, as amended by section 6 of the Act of 1884, in regard to the character of the certificates to be produced by the exempted classes, is found in the fact that by Article V of this treaty the provision for the Act of Congress of May 5, 1892, as amended by the Act approved November 3d, 1893, requiring all Chinese laborers lawfully within the limits of the United States before the passage of the Act of 1892 to be registered, as in said acts provided, was expressly cited and approved by the fifth article of the treaty. This article is as follows:

Treaty of 1894, Article V.

"The Government of the United States, having by an

Act of the Congress approved May 5, 1892, as amended by an Act approved November 3, 1893, required all Chinese laborers lawfully within the limits of the United States before the passage of the first-named act, to be registered as in said acts provided, with a view of affording them better protection, the Chinese government will not object to the enforcement of such acts, and reciprocally the Government of the United States recognizes the right of the Government of China to enact and enforce similar laws or regulations for the registration, free of charge, of all laborers, skilled or unskilled (not merchants as defined by said act of Congress) citizens of the United States in China, whether residing within or without treaty ports."

If it were intended by the treaty of 1894 that *all the provisions* of the acts of Congress relating to Chinese exclusion should remain in force, why should the parties to the treaty have selected *one* provision of the Act of May 5, 1892, as amended by the Act of November 3, 1893, requiring laborers to register, and extend it and recognize it by making it a part of the treaty? The rule *expressio unius, exclusio alterius* applies in this case. If it were intended that all the acts of Congress on the subject of Chinese exclusion, that is, all the acts relating to the steps to be taken by laborers here, and the steps to be taken by the exempted classes in order to come here, were to be continued in force, then there was no necessity of selecting *one* provision of *one* act, and saying that one should be considered as not obnoxious and in force. And the fact that this was done is strong proof in favor of the conclusion that all other provisions not thus incorporated in the treaty were to be considered as abrogated by the treaty.

A further, and strong argument, as it seems to us, in favor of our contention that the treaty of 1894 was to be a full and new arrangement between the two governments, solely independent of any former legislation by

Congress, with one single exception, and which definitely defined not only those who should, and those who should not come and reside in the United States, but also as to precisely what each class should do, that is, those that were to remain in this country, and those that were permitted to come here—is found in the fact that by the latter clause of Article 3 of that treaty the regulations that should govern and control Chinese *in transitu* across the territory of the United States, was specifically left to the Government of the United States. This clause reads as follows:

"It is also agreed that Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States in the course of their journey to and from other countries, subject to such regulations by the Government of the United States as may be necessary to prevent such privilege of transit from being abused."

So, it will be observed by the Court, the treaty leaves this one matter to be regulated by Congress, or by such action of the Executive Department of our Government as may be deemed advisable, so as to prevent the privilege of transit from being abused. This, then, is the only matter of regulation that is left by the treaty to the sole action of the Government of the United States.

We, therefore, respectfully insist that if the wife and child of Lee Lung in this case have complied with the provisions of Article III of the treaty of 1894, by the presentation to the Collector of Customs of certificates from the British government of the colony of Hong Kong, properly vised by the Consular Representative of the United States at that port, then they are entitled to admission, the only question open for consideration by the Collector being as to the identity of the parties named in the certificates.

For the purpose of showing the standing of Lee Lung, sometimes called Li Lung in this record, the attention of the Court is respectfully attracted to the certifications of his standing by many promint business men in Oregon, as shown by the record, pages 40–44.

SUMMARY.

Our contention therefore is, first, assuming that section 6 of the Act of 1882, as amended by section 6 of the Act of 1884, to be still in force and applicable to the cases at bar, that then in that case the Collector exceeded his jurisdiction in the manner as heretofore indicated, his decision is void and is reviewable by the court; and, second, assuming that by the third article of the treaty of 1894 not only the second article of the treaty of 1880, but also section 6 of the Act of 1882, as amended by section 6 of the Act of 1884, were abrogated and repealed—which we believe to be the case—then in such case the *only* evidence provided for as to the right of an alien Chinese to land in this country is the certificate provided for by Article III of the treaty of 1894, and this evidence was produced by the claimants in this case.

In the case just suggested, while we claim that no right exists upon the part of the United States to contravene the facts stated in the certificate by other evidence, still, should this be conceded, then it is respectfully submitted there was no sufficient evidence offered by the Collector to impeach the facts recited in the certificate; and the Collector, moreover, had no more right to reject the certificate issued in pursuance of Article III of the treaty of 1894—if such certificate is issued in full compliance with such treaty—than he had to reject one issued under the sixth section of the Act of 1884.

Wherefore, All things considered, we respectfully submit the decision of the District Court of the United States for the District of Oregon should be reversed, that the writ of habeas corpus issued heretofore in this case should be held good, and the claimants Li Tom Shi and Li A Tsoi should be permitted to remain in this country.

CHARLES J. SCHNABEL and
JOHN H. MITCHELL,
Attorneys for Petitioner.